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**DEC 08 2008**

**OFFICE OF PETITIONS**

In re Patent No. 7,338,535	:	
PLOS et al.	:	LETTER REGARDING PATENT
Issued: March 4, 2008	:	TERM ADJUSTMENT AND
Application No. 10/688,999	:	NOTICE OF INTENT TO ISSUE
Filed: October 21, 2003	:	CERTIFICATE OF CORRECTION
Attorney Docket No. 06028.0030-	:	
00000	:	

This letter is in response to the "REQUEST FOR CERTIFICATE OF CORRECTION," filed April 18, 2008. Pursuant to patentees' duty of good faith and candor to the Office, patentees request that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy.

The request for review of the determination of patent term adjustment is **granted**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised patent term adjustment of **zero (0) days**.

On March 4, 2008, the above-identified application matured into U.S. Patent No. 7,338,535, with a revised patent term adjustment of 79 days. On April 18, 2008, patentees submitted the instant comment.

Patentees assert that the determination of patent term adjustment of 79 day is incorrect and should be corrected to zero (0) days. Patentees aver that the Office failed to assess

applicants any delay for the filing of the Request for Continued Examination (RCE) and the request for an extension of time within the third month on March 19, 2007.<sup>1</sup>

The application history has been reviewed and it has been determined that the determination of patent term adjustment under 35 U.S.C. 154(b) of 79 days is incorrect.

A final Office action was mailed on September 19, 2006. Applicants filed their response in the form of a RCE and a request for an extension of time within the third month on March 19, 2007, in excess of the three-month period from the mailing date of the final Office action. See 37 CFR 1.704(b). Thus, applicants failed to engage in reasonable efforts to conclude prosecution of this application. The period of adjustment should have been reduced by 90 days, the number of days in the period beginning on the day after the date that is three months after the date of mailing of the final Office action, December 20, 2006, ending on the date the reply was filed, March 19, 2007. See 37 CFR 1.704(b). Accordingly, a period of reduction of 90 days will be entered.

In view thereof, the patent should have issued with a revised patent term adjustment of **zero (0) days** (286 days of Office delay - 297 days of applicant delay).

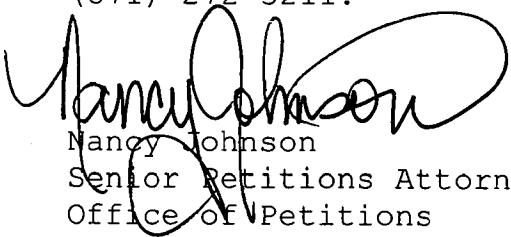
As this letter was submitted as an advisement to the Office of an error in patentees' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office.

This matter is being referred to the Certificate of Correction Branch for issuance of a certificate of correction to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **zero (0) days**.

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<sup>1</sup> The PALM records incorrectly reflect the filing date of the RCE and the request for an extension of time for response within the third month as March 18, 2007, instead of March 19, 2007.

Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.

  
Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

# PALM INTRANET

## PTA Calculations for Application: 10/688999

Application Filing Date:	10/21/2003	PTO Delay (PTO):	286
Issue Date of Patent:	03/04/2008	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	207
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	-90		

## File Contents History

Number	Date	Contents Description	PTO	APPL	START
69	12/05/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		90	
64.5	02/13/2008	PTA 36 MONTHS			
64	03/04/2008	PATENT ISSUE DATE USED IN PTA CALCULATION			
63	01/17/2008	EXPORT TO FINAL DATA CAPTURE			
62	01/16/2008	DISPATCH TO FDC			
61	01/16/2008	APPLICATION IS CONSIDERED READY FOR ISSUE			
60	01/09/2008	RESPONSE TO REASONS FOR ALLOWANCE			
59	01/09/2008	ISSUE FEE PAYMENT VERIFIED			
58	01/09/2008	ISSUE FEE PAYMENT RECEIVED			
57	12/04/2007	FINISHED INITIAL DATA CAPTURE			
56	10/22/2007	EXPORT TO INITIAL DATA CAPTURE			
55	10/17/2007	MAIL NOTICE OF ALLOWANCE			
54	10/11/2007	ISSUE REVISION COMPLETED			
53	10/11/2007	DOCUMENT VERIFICATION			
52	10/11/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
51	10/10/2007	NOTICE OF ALLOWABILITY			
50	10/05/2007	CASE DOCKETED TO EXAMINER IN GAU			
49	09/20/2007	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
48	09/22/2007	DATE FORWARDED TO EXAMINER			
47	09/20/2007	RESPONSE AFTER NON-FINAL ACTION		89	45
46	09/20/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
45	03/23/2007	MAIL NON-FINAL REJECTION			

44	03/20/2007	NON-FINAL REJECTION			
43	03/20/2007	DATE FORWARDED TO EXAMINER			
42	03/18/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
41	03/20/2007	DATE FORWARDED TO EXAMINER			
40	03/18/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
39	03/20/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
38	03/18/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
37	03/18/2007	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
36	03/19/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
35	09/19/2006	MAIL FINAL REJECTION (PTOL - 326)			
34	09/16/2006	FINAL REJECTION			
33	08/21/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
32	08/30/2006	DATE FORWARDED TO EXAMINER			
31	08/21/2006	RESPONSE AFTER NON-FINAL ACTION		31	24
30	08/21/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
29	08/21/2006	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
28	08/21/2006	REFERENCE CAPTURE ON IDS			
27.7	08/21/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
27	08/21/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
26	08/21/2006	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
25	08/21/2006	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
24	04/21/2006	MAIL NON-FINAL REJECTION			
23	04/17/2006	NON-FINAL REJECTION			
22	08/19/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
21	10/21/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
20	04/06/2006	DATE FORWARDED TO EXAMINER			
19	03/31/2006	RESPONSE TO ELECTION / RESTRICTION FILED		87	17

18	03/31/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
17	10/03/2005	MAIL RESTRICTION REQUIREMENT	286		-1
16	09/29/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
15.7	08/19/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	08/19/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	04/08/2005	CORRESPONDENCE ADDRESS CHANGE			
13	02/06/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
12	02/06/2004	CASE DOCKETED TO EXAMINER IN GAU			
11	02/06/2004	REFERENCE CAPTURE ON IDS			
10.7	10/21/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	10/21/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
9	01/22/2004	APPLICATION IS NOW COMPLETE			
8	01/22/2004	APPLICATION RETURN FROM OIPE			
7	01/22/2004	APPLICATION RETURN TO OIPE			
6	01/21/2004	APPLICATION DISPATCHED FROM OIPE			
5	01/22/2004	APPLICATION IS NOW COMPLETE			
4	01/15/2004	CLEARED BY OIPE CSR			
3	01/15/2004	CASE CLASSIFIED BY OIPE			
2	12/17/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	10/21/2003	INITIAL EXAM TEAM NN			

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#### EXPLANATION OF PTA CALCULATION

#### EXPLANATION OF PTE CALCULATION

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UNITED STATES PATENT AND TRADEMARK OFFICE  
**CERTIFICATE OF CORRECTION**

PATENT : 7,338,535 B2

DATED : Mar. 4, 2008

INVENTOR(S) : Plos et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (79) days

Delete the phrase "by 79 days" and insert – by 0 days--